



Reprinted
January 29, 2008

SENATE BILL No. 335

DIGEST OF SB 335 (Updated January 28, 2008 7:50 pm - DI 110)

Citations Affected: IC 5-2; IC 10-11; IC 22-4; IC 22-5; IC 34-30; IC 35-44; noncode.

Synopsis: Illegal alien matters. Requires the superintendent of the state police department (superintendent) to: (1) negotiate terms of a memorandum of understanding (memorandum) concerning a pilot project for the enforcement of federal immigration and customs laws; and (2) designate appropriate law enforcement officers to be trained under the memorandum. Requires: (1) the superintendent and governor, unless otherwise required by the applicable federal agency, to sign the memorandum on behalf of the state; and (2) the state police department to apply for federal funding, as available, for the costs
(Continued next page)

Effective: July 1, 2008; July 1, 2009; October 1, 2009.

**Delph, Boots, Kruse,
Young R Michael, Waltz, Steele,
Waterman, Drozda, Gard, Bray,
Becker, Arnold, Charbonneau,
Skinner, Kenley, Weatherwax, Alting,
Hershman, Long, Jackman, Paul,
Miller, Mishler, Landske**

January 10, 2008, read first time and referred to Committee on Pensions and Labor.
January 24, 2008, amended, reported favorably — Do Pass.
January 28, 2008, read second time, amended, ordered engrossed.

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associated with the training. Provides that a law enforcement officer certified as trained may enforce the federal immigration and customs laws. Prohibits an employer from knowingly hiring, after September 30, 2009, an unauthorized alien. Exempts certain utilities, hospitals, nonprofit organizations, and certain emergency medical transporters from this provision. Subject to availability of funds, authorizes the attorney general to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the appropriate prosecuting attorney under certain conditions; and (4) maintain certain records of violation orders. Authorizes a prosecuting attorney to file a civil action against an employer for knowingly hiring an unauthorized alien in the county where the alien is employed. Authorizes a court to: (1) hold a hearing on an expedited basis; (2) if an employer knowingly employs an unauthorized alien, order the employer to terminate the employment of unauthorized aliens, order the employer to file a sworn affidavit, and place the employer on probation for three years; and (3) order agencies to suspend all licenses held by the employer for the operation of the business location until the affidavit is filed, if the employer fails to file a sworn affidavit. Provides that a court may: (1) suspend the licenses of an employer for a second violation not later than 10 years after the date of the initial violation; and (2) revoke all licenses of the employer for a third violation not later than 10 years after the initial violation. Provides that a trier of fact may consider only the federal government's verification or status information in determining whether an individual is an unauthorized alien. Prohibits a prosecuting attorney from filing an action against an employer that verifies the employment authorization of an employed individual through the pilot program. Establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements. Makes it a Class B misdemeanor to file complaint, knowing the complaint is false or frivolous, with the attorney general or a prosecuting attorney. Provides that the suspension or revocation of a license does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages. Prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. Allows a person to bring an action to compel a governmental body to comply with the prohibition. Prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor if the state agency or political subdivision knows that the contractor employs or contracts with unauthorized aliens. Provides that: (1) a state agency or political subdivision may terminate a public contract for services if the contractor providing the services employs or contracts with unauthorized aliens unless the state or political subdivision determines that terminating the contract would be detrimental to the public interest or public property; and (2) if a public contract for services is terminated, a contractor is liable for actual damages. Allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens. Makes it a: (1) Class A misdemeanor to transport or move; and (2) Class A misdemeanor to conceal, harbor, or shield from detection; an alien, for purposes of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law. Exempts from these criminal provisions, certain religious, health care, and legal services providers, and spouses from

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the criminal provisions. Makes these offenses a Class D felony (Class C felony for subsequent offenses): (1) for a subsequent offense; or (2) if the offense involves more than five aliens. Requires the department of workforce development to verify the lawful presence of certain individuals to determine the individual's eligibility for unemployment benefits through the SAVE program.

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Reprinted
January 29, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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SENATE BILL No. 335

A BILL FOR AN ACT to amend the Indiana Code concerning immigration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]:

4 **Chapter 18. Citizenship and Immigration Status Information**
5 **Sec. 1. As used in this chapter, "governmental body" has the**
6 **meaning set forth in IC 5-22-2-13.**

7 **Sec. 2. A governmental body may not enact an ordinance, a**
8 **resolution, a rule, or a policy that prohibits or in any way restricts**
9 **another governmental body, including a law enforcement officer**
10 **(as defined under IC 5-2-1-2), a state or local official, or a state or**
11 **local government employee, from taking the following actions with**
12 **regard to information of the citizenship or immigration status,**
13 **lawful or unlawful, of an individual:**

- 14 (1) **Communicating or cooperating with federal officials.**
15 (2) **Sending to or receiving information from the United States**

SB 335—LS 6843/DI 110+



Department of Homeland Security.

(3) Maintaining information.

(4) Exchanging information with another federal, state, or local government entity.

Sec. 3. If a governmental body violates this chapter, a person lawfully domiciled in Indiana may bring an action to compel the governmental body to comply with this chapter.

SECTION 2. IC 10-11-2-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21.5. (a) As used in this section, "law enforcement officer" means a:

(1) police employee;

(2) county sheriff;

(3) county police officer;

(4) county police reserve officer;

(5) city police officer;

(6) city police reserve officer;

(7) town marshal;

(8) deputy town marshal; or

(9) member of a consolidated law enforcement department established under IC 36-3-1-5.1.

(b) The superintendent shall negotiate the terms of a memorandum of understanding between the state and the United States Department of Justice or the United States Department of Homeland Security concerning a pilot project for the enforcement of federal immigration and customs laws in Indiana.

(c) The memorandum of understanding described in subsection (b) must be signed on behalf of the state by the superintendent and governor, unless otherwise required by the United States Department of Justice or the United States Department of Homeland Security.

(d) The superintendent shall designate appropriate law enforcement officers to be trained under the memorandum of understanding described in subsection (b).

(e) The department shall apply for federal funding, as available, for the costs associated with training law enforcement officers under the memorandum of understanding described in subsection (b).

(f) A law enforcement officer certified as trained in accordance with the memorandum of understanding described in subsection (b) may enforce federal immigration and customs laws while performing within the scope of the law enforcement officer's

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1 duties.

2 (g) The superintendent shall coordinate efforts, as needed, with
3 the executive director of the department of homeland security to
4 address issues of national security in implementing this section.

5 SECTION 3. IC 22-4-14-9 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) As used in this
7 section, "SAVE program" means the Systematic Alien Verification
8 of Entitlements program operated by the United States
9 Department of Homeland Security or a successor program
10 designated by the United States Department of Homeland Security.

11 (b) For weeks of unemployment occurring subsequent to December
12 31, 1977, benefits may not be paid on the basis of services performed
13 by an alien unless the alien is an individual who has been lawfully
14 admitted for permanent residence at the time the services are
15 performed, is lawfully present for purposes of performing the services,
16 or otherwise is permanently residing in the United States under color
17 of law at the time the services are performed (including an alien who
18 is lawfully present in the United States as a result of the application of
19 the provisions of Section 207, Section 208, or Section 212(d)(5) of the
20 Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

21 (1) Any data or information required of individuals applying for
22 benefits to determine whether benefits are not payable to them
23 because of their alien status shall be uniformly required from all
24 applicants for benefits.

25 (2) In the case of an individual whose application for benefits
26 would otherwise be approved, no determination that benefits to
27 the individual are not payable because of ~~his~~ the individual's
28 alien status may be made except upon a preponderance of the
29 evidence.

30 (3) Any modifications to the provisions of Section 3304(a)(14) of
31 the Federal Unemployment Tax Act, as provided by P.L.94-566,
32 which specify other conditions or other effective date than stated
33 in this section for the denial of benefits based on services
34 performed by aliens and which are required to be implemented
35 under state law as a condition for full tax credit against the tax
36 imposed by the Federal Unemployment Tax Act, shall be
37 considered applicable under this section.

38 (c) If an individual who applies for benefits is not a citizen or
39 national of the United States, the department shall verify the lawful
40 presence of the individual to determine the individual's eligibility
41 for benefits through the SAVE program. The department shall
42 implement this subsection in accordance with federal law.

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SECTION 4. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE OCTOBER 1, 2009]:

Chapter 1.5. Employment of Unauthorized Aliens

Sec. 1. (a) This chapter applies only to an employee that an employer hires after September 30, 2009.

(b) This chapter does not apply to the following:

(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject to regulation by the Indiana utility regulatory commission under IC 8-1-2.

(2) A hospital licensed under IC 16-21.

(3) A county hospital organized under IC 16-22.

(4) A municipal hospital organized under IC 16-23.

(5) A nonprofit corporation.

(6) A person who operates a business of transporting emergency patients by ambulance or using a nontransporting emergency medical services vehicle (as defined in IC 16-31-3-0.5).

(7) A corporation organized under IC 8-1-13.

(8) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 2. As used in this chapter, "agency" means any state or local administration, agency, authority, board, bureau, commission, committee, council, department, division, institution, office, service, or other similar body of government created or established by law that issues a license for purposes of operating a business in Indiana.

Sec. 3. As used in this chapter, "employee" means an individual who:

(1) works or is hired to work for at least one thousand five hundred (1,500) hours during a twelve (12) month period;

(2) performs services for an employer; and

(3) is an individual from whom the employer is required to withhold wages under IC 6-3-4-8 or is an employee described in IC 6-3-4-8(l).

Sec. 4. (a) As used in this chapter, "employer" means a person that:

(1) transacts business in Indiana;

(2) has a license issued by an agency; and

(3) employs one (1) or more individuals who perform employment services in Indiana.

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(b) The term includes the state, a political subdivision (as defined in IC 3-5-2-38) of the state, and a self-employed person.

Sec. 5. As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2.

Sec. 6. (a) As used in this chapter, "license" means any agency permit, certificate, approval, registration, charter, or similar authorization that is:

(1) required by law; and

(2) issued by an agency;

for purposes of operating a business in Indiana.

(b) The term does not include an occupational or professional license.

Sec. 7. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or another legal entity.

Sec. 8. As used in this chapter, "pilot program" means the employment verification pilot program administered by the United States Department of Homeland Security and the Social Security Administration, or the successor of that program.

Sec. 9. As used in this chapter, "unauthorized alien" has the meaning set forth in 8 U.S.C. 1324a(h)(3).

Sec. 10. An employer shall not knowingly employ an unauthorized alien.

Sec. 11. (a) Subject to the availability of funds, the attorney general may investigate a complaint filed with the attorney general that an employer knowingly employed an unauthorized alien in violation of section 10 of this chapter.

(b) In investigating a complaint under subsection (a), the attorney general shall verify the work authorization of the alleged unauthorized alien with the federal government under 8 U.S.C. 1373(c).

(c) A complaint filed with the attorney general under subsection (a) must be:

(1) in writing; and

(2) signed by the individual filing the complaint.

Sec. 12. A state, county, or local official or employee may not attempt to make independently a final determination as to whether an individual is authorized to work in the United States.

Sec. 13. (a) If, after an investigation, the attorney general determines that an employer has knowingly employed an unauthorized alien, the attorney general shall notify the United States Immigration and Customs Enforcement.

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(b) If the attorney general determines that an employer has knowingly employed an unauthorized alien and that any defenses to knowingly employing an unauthorized alien established under this chapter do not apply, the attorney general may notify:

(1) local law enforcement agencies; and

(2) the prosecuting attorney in the county in which the unauthorized alien is employed.

The attorney general may not notify law enforcement agencies and the prosecuting attorney about the unauthorized alien unless the attorney general determines that the defenses established under this chapter do not apply.

Sec. 14. (a) The prosecuting attorney may bring a civil action for a violation of section 10 of this chapter against an employer in the county where the unauthorized alien employee is employed.

(b) A prosecuting attorney filing an action under subsection (a) may file only one (1) action against the employer relating to the employment of all unauthorized aliens employed by the employer at the time the prosecuting attorney files the action.

(c) A prosecuting attorney may file an additional action against an employer under this section for a second or subsequent violation of section 10 of this chapter only for violations allegedly committed by the employer after the employer receives notice that the prosecuting attorney has filed the initial action against the employer under this section.

Sec. 15. If a prosecuting attorney files an action under section 14 of this chapter, the court in which the action is filed may hold a hearing and make a determination of the action on an expedited basis.

Sec. 16. (a) Except as provided in sections 18 and 19 of this chapter, if a trier of fact determines that an employer knowingly employed an unauthorized alien in violation of section 10 of this chapter, the following apply:

(1) The court may do the following:

(A) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.

(B) Place the employer on probation for a three (3) year period. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.

(C) Order the employer to file a sworn affidavit signed by

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the employer with the prosecuting attorney within three (3) business days after the order is issued under clause (A).

The affidavit must include a statement that the employer:

(i) has terminated the employment of all unauthorized aliens; and

(ii) will not knowingly employ an unauthorized alien.

(2) The court, after considering the relevant factors listed in subsection (b), may order an agency to suspend, for not more than ten (10) business days, a license described in section 17(a) of this chapter that is held by the employer.

(b) The court may consider the following factors, if applicable, in deciding whether to order an agency to suspend an employer's license under subsection (a)(2):

(1) The number of unauthorized aliens employed by the employer.

(2) Any prior misconduct by the employer.

(3) The degree of harm resulting from the violation.

(4) The extent to which the employer made good faith efforts to comply with any applicable requirements under this chapter.

(5) The duration of the violation.

(6) The role of the directors, officers, or agents of the employer in the violation.

(7) Any other factors the court considers relevant.

Sec. 17. (a) This section applies to all licenses held by an employer:

(1) that are necessary to operate the employer's business at the employer's business location where an unauthorized alien worked; or

(2) if a license is not necessary at the employer's business location described in subdivision (1), that are held by the employer for the employer's primary place of business.

(b) If an employer fails to file a sworn affidavit required under section 16(a)(1)(C) of this chapter with the prosecuting attorney within three (3) business days after the order requiring the filing of the affidavit is issued, the court may order the appropriate agencies to suspend all licenses that are held by the employer. All licenses suspended under this subsection may remain suspended until the employer files a sworn affidavit described under section 16(a)(1)(C) of this chapter with the prosecuting attorney.

(c) If the employer subject to an order filed under subsection (b) files a sworn affidavit required under section 16(a)(1)(C) of this

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chapter, the court may order the appropriate agencies to reinstate the employer's suspended licenses.

Sec. 18. If:

(1) a trier of fact determines that an employer knowingly employed an unauthorized alien in a second violation of section 10 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than ten (10) years after the date of the initial violation; the court may order the appropriate agencies to suspend, for not more than ten (10) business days, all licenses described in section 17(a) of this chapter that are held by the employer.

Sec. 19. If:

(1) a trier of fact determines that an employer knowingly employed an unauthorized alien in a third violation of section 10 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than ten (10) years after the date of the initial violation; the court may order the appropriate agencies to permanently revoke all licenses held by the employer that are described in section 17(a) of this chapter.

Sec. 20. (a) If an agency receives an order from a court under section 16(a)(2), 17(b), or 18 of this chapter, the agency shall immediately suspend the license or licenses described in section 17(a) of this chapter that are held by the employer to which the order relates.

(b) If an agency receives an order from a court under section 19 of this chapter, the agency shall immediately revoke the license or licenses described in section 17(a) of this chapter that are held by the employer to which the order relates.

Sec. 21. A court shall send copies of all orders issued under sections 16, 17, 18, and 19 of this chapter to the attorney general.

Sec. 22. (a) In determining whether an individual is an unauthorized alien for purposes of this chapter, a trier of fact may consider only the federal government's verification or status information provided under 8 U.S.C. 1373(c).

(b) The federal government's verification or status information provided under 8 U.S.C. 1373(c) creates a rebuttable presumption of an individual's lawful status.

(c) The court may:

(1) take judicial notice of the federal government's verification or status information; and

(2) request the federal government to provide automated or

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testimonial verification under 8 U.S.C. 1373(c).

Sec. 23. A prosecuting attorney may not file an action against an employer under section 13 of this chapter for knowingly employing an unauthorized alien if the employer verified the employment authorization of the employed individual through the pilot program.

Sec. 24. An employer may establish as an affirmative defense against an alleged violation under section 10 of this chapter that the employer complied in good faith with the requirements of 8 U.S.C. 1324a(b).

Sec. 25. The attorney general shall:

- (1) maintain copies of court orders received under section 21 of this chapter;
- (2) make the court orders available on the attorney general's Internet web site; and
- (3) establish and maintain a data base of the names and addresses of the employers that have a violation under this chapter.

Sec. 26. This chapter does not require an employer to take any action that the employer believes in good faith would violate federal law.

Sec. 27. After September 30, 2009, an employer shall verify the employment eligibility of each employee of the employer through the pilot program after hiring the employee.

Sec. 28. A person who files a complaint with the attorney general or a prosecuting attorney under this chapter, knowing that the complaint is false or frivolous, commits a Class B misdemeanor.

Sec. 29. The suspension or revocation of a license under this chapter does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages paid by the employer to an employee.

Sec. 30. This chapter shall be enforced without regard to race or national origin.

SECTION 5. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter. 1.7. Public Contract for Services; Unauthorized Aliens

Sec. 1. As used in this chapter, "contractor" means a person that has or is attempting to enter into a public contract for services with a state agency or political subdivision.

Sec. 2. As used in this chapter, "person" means an individual, a

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1 corporation, a limited liability company, a partnership, or another
2 legal entity.

3 Sec. 3. As used in this chapter, "political subdivision" has the
4 meaning set forth in 36-1-2-13.

5 Sec. 4. As used in this chapter, "public contract for services"
6 means any type of agreement between a state agency or a political
7 subdivision and a contractor for the procurement of services.

8 Sec. 5. As used in this chapter, "state agency" has the meaning
9 set forth in IC 4-6-3-1.

10 Sec. 6. As used in this chapter, "subcontractor" means a person
11 that:

12 (1) is a party to a contract with a contractor; and

13 (2) provides services for work the contractor is performing
14 under a public contract for services.

15 Sec. 7. As used in this chapter, "unauthorized alien" has the
16 meaning set forth in 8 U.S.C. 1324a(h)(3).

17 Sec. 8. A state agency or political subdivision may not enter into
18 or renew a public contract for services with a contractor if the
19 state agency or political subdivision knows that the contractor or
20 a subcontractor of the contractor employs or contracts with an
21 unauthorized alien.

22 Sec. 9. Before a state agency or political subdivision may enter
23 into a public contract for services with a contractor, the contractor
24 shall certify in a manner that does not violate federal law that the
25 contractor, at the time of the certification, does not employ or
26 contract with an unauthorized alien.

27 Sec. 10. (a) A contractor or a subcontractor may not employ or
28 contract with an unauthorized alien.

29 (b) If a contractor violates this section, the state agency or
30 political subdivision shall require the contractor to remedy the
31 violation not later than thirty (30) days after the date the state
32 agency or political subdivision notifies the contractor of the
33 violation.

34 Sec. 11. (a) Except as provided in subsection (b), if the
35 contractor fails to remedy the violation within the thirty (30) day
36 period provided under section 10(b) of this chapter, the state
37 agency or political subdivision shall terminate the public contract
38 for services with the contractor for breach of the public contract
39 for services.

40 (b) If a contractor employs or contracts with an unauthorized
41 alien but the state agency or political subdivision (whichever the
42 contractor has a public contract for services with) determines that

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terminating the public contract for services under subsection (c) would be detrimental to the public interest or public property, the state agency or political subdivision may allow the public contract for services to remain in effect until the state agency or political subdivision procures a new contractor.

(c) If a state agency or political subdivision terminates a public contract for services under subsection (a), the contractor shall be liable to the state agency or political subdivision for actual damages.

Sec. 12. A contractor may file an action with a circuit or superior court having jurisdiction in the county to challenge:

(1) a notice of a violation to the contractor under section 10(b) of this chapter not later than twenty (20) days after the contractor receives the notice; or

(2) a termination of a public contract for services under section 11(a) of this chapter not later than twenty (20) days after the state agency or political subdivision terminates the public contract for services with the contractor.

Sec. 13. If a contractor uses a subcontractor, the subcontractor shall certify to the contractor in a manner that does not violate federal law that the subcontractor, at the time of certification, does not employ or contract with an unauthorized alien.

Sec. 14. A contractor shall maintain on file a certification of a subcontractor under section 13 of this chapter throughout the duration of the term of a contract with the subcontractor.

Sec. 15. (a) If a contractor determines that a subcontractor is in violation of this chapter, the contractor may terminate a contract with the subcontractor for the violation.

(b) A contract terminated under subsection (a) for a violation of this chapter by a subcontractor may not be considered a breach of contract by the contractor or the subcontractor.

(c) A subcontractor may file an action with a circuit or superior court having jurisdiction in the county to challenge a termination of a contract under subsection (a) not later than twenty (20) days after the contractor terminates the contract with the subcontractor.

SECTION 6. IC 34-30-2-87.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 87.3. IC 22-5-1.5-22 (Concerning certain employers that employ unauthorized aliens).**

SECTION 7. IC 35-44-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2008]:

Chapter 5. Offenses Relating to Illegal Aliens

Sec. 1. This chapter does not apply to the following:

- (1) A church or religious organization.
- (2) The provision of assistance for health care items and services that are necessary for the treatment of an emergency medical condition of an individual.
- (3) A health care provider (as defined in IC 16-18-2-163(a)) that is providing health care services.
- (4) An attorney or other person that is providing legal services.
- (5) A person who:
 - (A) is a spouse of an alien or who stands in relation of parent or child to an alien; and
 - (B) would otherwise commit an offense under this chapter with respect to the alien.

Sec. 2. As used in this chapter, "alien" has the meaning set forth in 8 U.S.C. 1101(a).

Sec. 3. As used in this chapter, "federal immigration agency" means an agency of the federal government responsible for the determination of the immigration status of aliens present in the United States.

Sec. 4. Except as provided in section 6 of this chapter, a person who:

- (1) transports; or
- (2) moves;

an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law commits transporting an illegal alien, a Class A misdemeanor.

Sec. 5. Except as provided in section 6 of this chapter, a person who:

- (1) conceals;
- (2) harbors; or
- (3) shields from detection;

an alien in any place, including a building or means of transportation, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law commits harboring an illegal alien, a Class A misdemeanor.

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1 **Sec. 6. (a) Except as provided under subsection (b), an offense**
 2 **under section 4 or 5 of this chapter is a Class D felony if the:**

3 **(1) person has a prior unrelated conviction under section 4 or**
 4 **5 of this chapter; or**

5 **(2) offense involved more than five (5) aliens.**

6 **(b) The offense is a Class C felony if the person has a prior**
 7 **unrelated conviction under this section.**

8 **Sec. 7. A determination by a federal immigration agency that an**
 9 **alien has come to, entered, or remained in the United States in**
 10 **violation of law creates a rebuttable presumption that the alien is**
 11 **in the United States in violation of law.**

12 **SECTION 8. [EFFECTIVE OCTOBER 1, 2009] A prosecuting**
 13 **attorney may file an action against an employer under**
 14 **IC 22-5-1.5-14, as added by this act, only for a violation of**
 15 **IC 22-5-1.5-10, as added by this act, that occurs after September**
 16 **30, 2009.**

17 **SECTION 9. [EFFECTIVE JULY 1, 2008] IC 35-44-5-4 and**
 18 **IC 35-44-5-5, both as added by this act, apply only to crimes**
 19 **committed after June 30, 2008.**

20 **SECTION 10. [EFFECTIVE JULY 1, 2008] (a) The attorney**
 21 **general may request funding to implement IC 22-5-1.5-11, as added**
 22 **by this act, in the next biennial budget submission.**

23 **(b) This SECTION expires July 1, 2012.**

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SENATE MOTION

Madam President: I move that Senator Simpson be added as second author and Senators Boots, Drozda, Gard, Bray, Becker, Walker, Arnold and Charbonneau be added as coauthors of Senate Bill 335.

DELPH

SENATE MOTION

Madam President: I move that Senator Boots be removed as second author of Senate Bill 335.

BOOTS

SENATE MOTION

Madam President: I move that Senators Jackman and Paul be added as coauthors of Senate Bill 335.

DELPH

SENATE MOTION

Madam President: I move that Senator Long be added as coauthor of Senate Bill 335.

DELPH

SENATE MOTION

Madam President: I move that Senator Hershman be added as coauthor of Senate Bill 335.

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SENATE MOTION

Madam President: I move that Senators Skinner, Kenley, Weatherwax and Alting be added as coauthors of Senate Bill 335.

DELPH

SENATE MOTION

Madam President: I move that Senator Walker be removed as coauthor of Senate Bill 335.

WALKER

SENATE MOTION

Madam President: I move that Senators Miller and Mishler be added as coauthors of Senate Bill 335.

DELPH

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 335, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTION 5 with "[EFFECTIVE OCTOBER 1, 2009]".

Replace the effective date in SECTION 8 with "[EFFECTIVE OCTOBER 1, 2009]".

Page 2, line 32, delete "police".

Page 2, line 33, delete "employees" and insert "**law enforcement officers**".

Page 2, line 36, delete "police employees" and insert "**law enforcement officers**".

Page 2, line 38, delete "police employee" and insert "**law enforcement officer**".

Page 2, line 41, delete "police employee's" and insert "**law**

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enforcement officer's".

Page 3, delete lines 3 through 42.

Page 4, delete lines 1 through 18.

Page 4, line 23, after "1." insert **"(a) This chapter applies only to an employee that an employer hires after September 30, 2009. (b)".**

Page 4, line 23, after "to" insert **"the following:**

(1)".

Page 4, line 23, delete "a" and insert **"A".**

Page 4, between lines 25 and 26, begin a new line block indented and insert:

"(2) A hospital licensed under IC 16-21.

(3) A county hospital organized under IC 16-22.

(4) A municipal hospital organized under IC 16-23.

(5) A nonprofit corporation.

(6) A person who operates a business of transporting emergency patients by ambulance or using a nontransporting emergency medical services vehicle (as defined in IC 16-31-3-0.5)".

Page 4, line 32, after "individual" insert **"who:**

(1) works or is hired to work for at least one thousand five hundred (1,500) hours during a twelve (12) month period;

(2) performs employment services for an employer; and

(3) is an individual from whom the employer is required to withhold wages under IC 6-3-4-8 or is an employee described in IC 6-3-4-8(1)".

Page 4, delete line 33.

Page 4, between lines 41 and 42, begin a new paragraph and insert:

"Sec. 5. As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2".

Page 4, line 42, delete "5." and insert **"6".**

Page 5, line 8, delete "6." and insert **"7".**

Page 5, line 11, delete "7." and insert **"8".**

Page 5, line 15, delete "8." and insert **"9".**

Page 5, line 17, delete "9. A person" and insert **"10. An employer".**

Page 5, line 19, delete "10. (a) The" and insert **"11. (a) Subject to the availability of funds, the".**

Page 5, line 19, delete "shall" and insert **"may".**

Page 5, line 21, delete "9" and insert **"10".**

Page 5, between lines 26 and 27, begin a new paragraph and insert:

"(c) A complaint filed with the attorney general under subsection (a) must be:

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(1) in writing; and

(2) signed by the individual filing the complaint."

Page 5, line 27, delete "11." and insert "**12.**".

Page 5, line 30, delete "12." and insert "**13.**".

Page 5, line 38, delete "13. (a) If a prosecuting attorney receives notification from" and insert "**14. (a) The prosecuting attorney may bring an action for a violation of section 10 of this chapter against an employer in the county where the unauthorized alien employee is employed.**".

Page 5, delete lines 39 through 42.

Page 6, line 7, delete "9" and insert "**10**".

Page 6, line 11, delete "14." and insert "**15.**".

Page 6, line 11, delete "13" and insert "**14**".

Page 6, line 12, delete "shall" and insert "**may**".

Page 6, line 15, delete "15." and insert "**16.**".

Page 6, line 15, delete "section 17" and insert "**sections 18 and 19**".

Page 6, line 16, delete "a person" and insert "**an employer**".

Page 6, line 17, delete "9" and insert "**10**".

Page 6, line 19, delete "shall" and insert "**may**".

Page 6, line 37, delete "16(a)" and insert "**17(a)**".

Page 6, line 39, delete "shall" and insert "**may**".

Page 7, line 11, delete "16." and insert "**17.**".

Page 7, line 20, delete "15(a)(1)(C)" and insert "**16(a)(1)(C)**".

Page 7, line 22, delete "shall" and insert "**may**".

Page 7, line 24, delete "must" and insert "**may**".

Page 7, line 26, delete "15(a)(1)(C)" and insert "**16(a)(1)(C)**".

Page 7, line 28, delete "15(a)(1)(C)" and insert "**16(a)(1)(C)**".

Page 7, line 29, delete "shall" and insert "**may**".

Page 7, between lines 30 and 31, begin a new paragraph and insert:
"Sec. 18. If:

(1) a court determines that an employer knowingly employed an unauthorized alien in a second violation of section 10 of this chapter; and

(2) the violation referred to in subdivision (1) occurred not later than ten (10) years after the date of the initial violation; the court may order the appropriate agencies to suspend, for not more than ten (10) business days, all licenses described in section 17(a) of this chapter that are held by the employer."

Page 7, line 31, delete "17." and insert "**19.**".

Page 7, line 32, delete "a person" and insert "**an employer**".

Page 7, line 33, delete "second or subsequent" and insert "**third**".

Page 7, line 34, delete "9" and insert "**10**".

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Page 7, line 35, delete "during" and insert **"not later than ten (10) years after the date of the initial violation;"**.

Page 7, delete lines 36 through 37.

Page 7, line 38, delete "shall" and insert **"may"**.

Page 7, line 40, delete "16(a)" and insert **"17(a)"**.

Page 7, line 41, delete "18." and insert **"20."**.

Page 7, line 42, delete "15(a)(2) or 16(b)" and insert **"16(a)(2), 17(b), or 18"**.

Page 8, line 2, delete "16(a)" and insert **"17(a)"**.

Page 8, line 4, delete "17" and insert **"19"**.

Page 8, line 6, delete "16(a)" and insert **"17(a)"**.

Page 8, line 8, delete "19." and insert **"21."**.

Page 8, line 9, delete "15, 16, and 17" and insert **"16, 17, 18, and 19"**.

Page 8, line 10, delete "20." and insert **"22."**.

Page 8, line 22, delete "21. There is a rebuttable presumption that an employer did" and insert **"23. A prosecuting attorney may not file an action against an employer under section 13 of this chapter for knowingly employing an unauthorized alien if the employer verified the employment authorization of the employed individual through the pilot program."**

Page 8, delete lines 23 through 25.

Page 8, line 26, delete "22." and insert **"24."**.

Page 8, line 27, delete "9" and insert **"10"**.

Page 8, line 30, delete "23." and insert **"25."**.

Page 8, line 31, delete "19" and insert **"21"**.

Page 8, line 38, delete "24." and insert **"26."**.

Page 8, line 41, delete "25. After December 31, 2008," and insert **"27. After September 30, 2009,"**.

Page 9, line 2, delete "26." and insert **"28."**.

Page 9, line 3, delete "10" and insert **"11"**.

Page 9, between lines 4 and 5, begin a new paragraph and insert:

"Sec. 29. The suspension or revocation of a license under this chapter does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages paid by the employer to an employee."

Page 11, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 7. IC 34-30-2-87.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 87.3. IC 22-5-1.5-22 (Concerning certain employers that employ unauthorized aliens)."

Page 11, between lines 10 and 11, begin a new paragraph and insert:

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"Sec. 1. This chapter does not apply to the following:

- (1) A church or religious organization.**
- (2) The provision of assistance for health care items and services that are necessary for the treatment of an emergency medical condition of an individual.**
- (3) A health care provider (as defined in IC 16-18-2-163(a)) that is providing health care services.**
- (4) An attorney or other person that is providing legal services.**
- (5) A person who:**
 - (A) is a spouse of an alien or who stands in relation of parent or child to an alien; and**
 - (B) would otherwise commit an offense under this chapter with respect to the alien."**

Page 11, line 11, delete "1." and insert "2."

Page 11, line 13, delete "2." and insert "3."

Page 11, line 17, delete "3." and insert "4."

Page 11, line 17, delete "5" and insert "6".

Page 11, line 21, after "an alien" insert ", for the purpose of commercial advantage or private financial gain,".

Page 11, line 25, delete "4." and insert "5."

Page 11, line 25, delete "5" and insert "6".

Page 11, line 31, after "transportation," insert "for the purpose of commercial advantage or private financial gain,".

Page 11, line 35, delete "5." and insert "6."

Page 11, line 36, delete "3 or 4" and insert "4 or 5".

Page 11, line 37, delete "3" and insert "4".

Page 11, line 38, delete "4" and insert "5".

Page 11, line 38, after "chapter;" insert "or".

Page 11, line 39, delete "aliens; or" and insert "aliens."

Page 11, delete lines 40 through 41.

Page 12, line 2, delete "6." and insert "7."

Page 12, line 7, delete "IC 22-5-1.5-13," and insert "IC 22-5-1.5-14,".

Page 12, line 8, delete "IC 22-5-1.5-9," and insert "IC 22-5-1.5-10,".

Page 12, line 9, delete "December 31, 2008." and insert "September 30, 2009."

Page 12, line 10, delete "IC 35-44-5-3" and insert "IC 35-44-5-4".

Page 12, line 11, delete "IC 35-44-5-4," and insert "IC 35-44-5-5,".

Page 12, after line 12, begin a new paragraph and insert:

"SECTION 11. [EFFECTIVE JULY 1, 2008] (a) The attorney general may request funding to implement IC 22-5-1.5-11, as added

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by this act, in the next biennial budget submission.

(b) This SECTION expires July 1, 2012."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 335 as introduced.)

KRUSE, Chairperson

Committee Vote: Yeas 10, Nays 1.

SENATE MOTION

Madam President: I move that Senator Simpson be removed as second author of Senate Bill 335.

SIMPSON

SENATE MOTION

Madam President: I move that Senator Boots be removed as coauthor of Senate Bill 335.

BOOTS

SENATE MOTION

Madam President: I move that Senator Boots be added as second author of Senate Bill 335.

DELPH

SENATE MOTION

Madam President: I move that Senator Landske be added as coauthor of Senate Bill 335.

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SENATE MOTION

Madam President: I move that Senate Bill 335 be amended to read as follows:

Page 3, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 3. IC 22-4-14-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. **(a) As used in this section, "SAVE program" means the Systematic Alien Verification of Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.**

(b) For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services are performed, is lawfully present for purposes of performing the services, or otherwise is permanently residing in the United States under color of law at the time the services are performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 207, Section 208, or Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

(1) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of ~~his~~ **the individual's** alien status may be made except upon a preponderance of the evidence.

(3) Any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act, as provided by P.L.94-566, which specify other conditions or other effective date than stated in this section for the denial of benefits based on services performed by aliens and which are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, shall be considered applicable under this section.

(c) If an individual who applies for benefits is not a citizen or national of the United States, the department shall verify the lawful presence of the individual to determine the individual's eligibility for benefits through the SAVE program. The department shall implement this subsection in accordance with federal law."

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Page 3, between lines 22 and 23, begin a new line block indented and insert:

"(7) A corporation organized under IC 8-1-13.

(8) A corporation organized under IC 23-17 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13."

Page 3, line 33, delete "employment".

Page 4, between lines 38 and 39, begin a new paragraph and insert:

"Sec. 13. (a) If, after an investigation, the attorney general determines that an employer has knowingly employed an unauthorized alien, the attorney general shall notify the United States Immigration and Customs Enforcement.

(b) If the attorney general determines that an employer has knowingly employed an unauthorized alien and that any defenses to knowingly employing an unauthorized alien established under this chapter do not apply, the attorney general may notify:

(1) local law enforcement agencies; and

(2) the prosecuting attorney in the county in which the unauthorized alien is employed.

The attorney general may not notify law enforcement agencies and the prosecuting attorney about the unauthorized alien unless the attorney general determines that the defenses established under this chapter do not apply."

Page 4, delete lines 39 through 42.

Page 5, delete lines 1 through 4.

Page 5, line 5, delete "an" and insert "**a civil**".

Page 5, line 23, delete "court" and insert "**trier of fact**".

Page 6, line 39, delete "court" and insert "**trier of fact**".

Page 7, line 6, delete "court" and insert "**trier of fact**".

Page 7, line 26, delete "court" and insert "**trier of fact**".

Page 8, line 18, delete "knowingly".

Page 8, line 18, delete "false or frivolous".

Page 8, line 19, after "general" insert "**or a prosecuting attorney**".

Page 8, line 19, delete "section 11 of".

Page 8, line 20, delete "chapter" and insert "**chapter, knowing that the complaint is false or frivolous,**".

Page 8, line 20, delete "C" and insert "**B**".

Page 8, between lines 24 and 25, begin a new paragraph and insert:

"Sec. 30. This chapter shall be enforced without regard to race

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or national origin."

Re-number all SECTIONS consecutively.

(Reference is to SB 335 as printed January 25, 2008.)

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